Bryan G. Pratt (09924) RADER, FISHMAN & GRAUER, PLLC 10653 South River Parkway, Suite 150 South Jordan, UT 84095

Tel.: (801) 572-0185 Fax: (801) 572-7666

Attorneys for Plaintiff

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

1-800 CONTACTS, INC. a Delaware corporation,	
Plaintiff,	Case No.:
v.	
Lensfast, L.L.C. d/b/a CONTACTLENS.COM, LENSFAST.COM, and E-CONTACTS.COM a Limited Liability Company of Wyoming, and	COMPLAINT
Randolph Weigner, of Meredith New Hampshire	
Defendants.	

Plaintiff 1-800 CONTACTS, INC. ("1-800 CONTACTS" or "Plaintiff") for its Complaint against Defendants Lensfast, L.L.C. d/b/a as CONTACTLENS.COM, LENSFAST.COM, and E-CONTACTS.COM and Randolph Weigner ("Lensfast" or "Defendants") alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Lensfast's acts of trademark infringement, unfair competition, false designation of origin, false advertising, passing off, and unjust enrichment under federal, state and/or common law as a result of Lensfast's wrongful acts, including willful infringement of 1-800 CONTACTS' rights in the trademark 1800CONTACTS, 1-800 CONTACTS, and 1 800 CONTACTS (the "1-800 CONTACTS Marks").

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). On information and belief, the parties are citizens of different states and the amount in controversy far exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, creating jurisdiction under 28 U.S.C. § 1332. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.
- 3. This Court has personal jurisdiction over Lensfast. Upon information and belief, Lensfast conducts business in this District, having shipped contacts and other items to this District. In addition, Lensfast has purposefully availed itself of the privilege of acting in this District by, among other things, advertising via the Internet in this District and offering interactive websites at www.lensfast.com, www.contactlens.com, and www.e-contacts.com ("the

Lensfast Websites") and various affiliate websites, which are accessible by Internet users throughout the country, including in this District, which permit users to register online, including in this District, and from which product can be ordered and shipped throughout the country, including in this District. *See* excerpts from the Lensfast Websites at **Exhibit A.** Lensfast has used the 1-800 CONTACTS Marks without authorization or consent from 1-800 CONTACTS, including in this District. The tortuous conduct about which 1-800 CONTACTS complains has been committed by Lensfast in this District. Lensfast's actions are aimed, at least in part, at this District.

- 4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). A substantial portion of the activity about which 1-800 CONTACTS complains has taken place in this District, and the damages suffered by 1-800 CONTACTS were suffered, at least in part, in this District.
- 5. Upon information and belief, Lensfast transacts business throughout the entire United States, including in the District of Utah. The unlawful acts committed by Lensfast, as hereinafter alleged, have been and are, in whole or in part, conceived, carried out and made effective within this District. The interstate trade or commerce described herein by Lensfast is carried out in part within this District.

THE PARTIES

- 6. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation, with its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.
- 7. Upon information and belief, Defendant Lensfast, L.L.C. is a Limited Liability Company with a mailing address and a principle place of business of 1903 S Greeley Hwy #127, Cheyenne, WY 82001. *See* Wyoming Secretary of State Record at **Exhibit B**. Defendant Lensfast operates throughout the United States including in the State of Utah.

- 8. Upon information and belief, Lensfast, L.L.C. also operates under the names lensfast.com, contactlens.com, and e-contacts.com and often offers the address of P.O. Box 1001, Meredith, NH 03253 as its mailing address.
- 9. Upon information and belief, Defendant Randolph Weigner, located at the address of 29 Douglas Dr., Meredith, NH 03253, is the owner of Lensfast L.L.C. and sole administrative contact of the Lensfast Websites.
- 10. The public records for the domain name "lensfast.com" show that Lensfast, L.L.C. is the owner of the domain name and that Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. *See* Whois record at **Exhibit C**.
- 11. The public records for the domain name "e-contacts.com" show that there is no owner of the domain name listed, but Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. *See* Whois record at **Exhibit D**.
- 12. The public records for the domain name "contactlens.com" show that again there is no owner of the domain name listed, but Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. *See* Whois record at **Exhibit E**.

GENERAL ALLEGATIONS

1-800 CONTACTS' ACTIVITIES AND PROPRIETARY RIGHTS

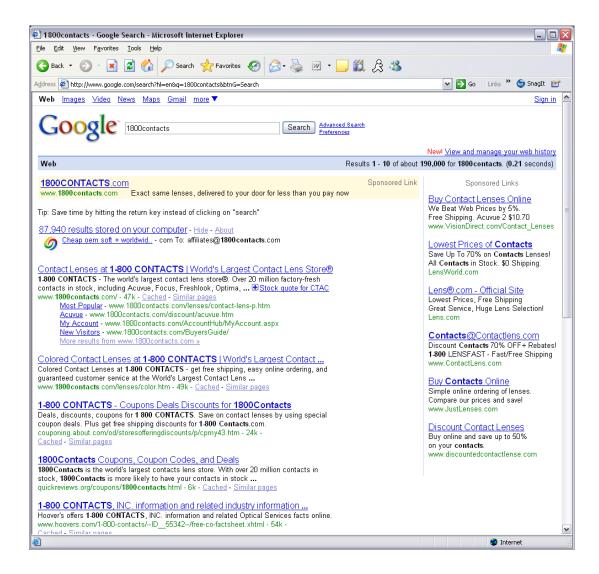
13. For over a decade, 1-800 CONTACTS has been and is now extensively engaged in the business of selling and distributing contact lenses and eye care products via telephone and fax, through the Internet and by mail (the "1-800 CONTACTS" Goods and Services"). Indeed, 1-800 CONTACTS is the market leader in the field of replacement contact lenses, having filled

over 16 million orders for over five million customers, with an inventory of over 20 million lenses. 1-800 CONTACTS' products can be ordered over the Internet via Plaintiff's website at www.1800contacts.com (the "1-800 CONTACTS Website").

- 14. Since at least as early as 1995, the 1-800 CONTACTS Goods and Services have been widely advertised and offered in interstate commerce throughout the United States. The 1-800 CONTACTS Marks are used extensively in various advertising and promotional media, including the Internet, radio, television, trade shows, and through various printed media including direct mail.
- 15. 1-800 CONTACTS possesses common law and federal registration rights in the mark 1-800 CONTACTS, including U.S. Registration Nos. 2,675,866 and 2,731,114. Copies of these registrations and printouts from the U.S. Patent and Trademark Office database for such registrations are attached at **Exhibit F**.
- 16. U.S. Registration Nos. 2,675,866 and U.S. Registration No. 2,731,114 are incontestable and constitute conclusive evidence of 1-800 CONTACTS' ownership of the 1-800 CONTACTS Marks, its exclusive right to use the marks throughout the United States, and the validity of the registrations and the marks.
- 17. As a result of the quality of the 1-800 CONTACTS Goods and Services and the widespread promotion thereof under the 1-800 CONTACTS Marks, the 1-800 CONTACTS Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, the 1-800 CONTACTS Marks are extensively known and have become symbols of Plaintiff, its quality products and services, and its goodwill.

LENSFAST'S WRONGFUL ACTS

- 18. Like 1-800 CONTACTS, Lensfast offers the sale of replacement contact lenses over the Internet.
- 19. 1-800 CONTACTS discovered that Lensfast had purchased sponsored advertisements from Google, and other search engines, for Plaintiff's Marks to trigger advertising and/or a link to the Lensfast Websites. Such infringing activity was immediately brought to the attention of Lensfast.
- 20. Lensfast blatantly ignored the notification letter and did not cease using the 1-800 CONTACTS Marks to trigger advertising. For example, a shown in the below screen shot, which was prepared October 1, 2007, when 1800CONTACTS was entered into the search box, links to www.contactlens.com appear on the right side of the screen under the "Sponsored Links" section.



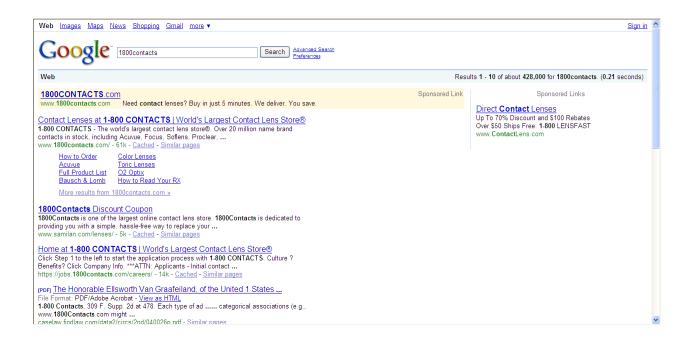
- 21. The www.lensfast.com website advertisements are triggered upon a search for 1800CONTACTS and thus, use the 1800 CONTACTS trademark as a triggering keyword to display and promote Lensfast's directly competitive goods and services. In essence, Lensfast is using the 1-800 CONTACTS Marks to trick consumers into visiting the Lensfast Websites
- 22. Lensfast's actions are specifically aimed at diverting web users who are expressly looking for 1-800 CONTACTS and the 1-800 CONTACTS Goods and Services. Indeed,

 Lensfast goes even so far as to intimate that there is an affiliation between 1-800 CONTACTS

and Lensfast by using a number of variations and mis-spellings of the 1-800 CONTACTS Marks to trigger the Lensfast ads.

THE PARTIES' PAST HISTORY AND LENSFAST'S INCESSANT INFRINGEMENT

- 23. On or about September 12, 2007, 1-800 CONTACTS' outside counsel, Bryan G. Pratt, contacted Lensfast in writing to notify Lensfast of the infringement. A copy of the letter is attached hereto as **Exhibit G.**
 - 24. No response to the notification letter was received from Lensfast.
- 25. On or about March 14, 2008, 1-800 CONTACTS noted another increase in Lensfast's level of infringement. Consequently, Plaintiff's outside counsel, Bryan G. Pratt, sent another letter to Lensfast concerning Defendants' increasingly infringing acts. A copy of the letter is attached hereto as **Exhibit H**.
- 26. On or about April 5, 2008, Plaintiff's second cease and desist letter was refused and returned.
- 27. In spite of its previous receipt of notice to stop the infringement, Lensfast took no action to remedy the infringement after refusing the notification. In fact, upon refusing this communication, infringement by Lensfast was maintained and in some instances actually increased.
- 28. Lensfast's infringing activities continue today, as evidenced by a screen shot prepared on December 22, 2008 that shows sponsored advertisements purchased by Lensfast that are triggered upon searching for the 1-800 CONTACTS Marks. As may be seen, the website www.contactlens.com is featured on the top right portion of the page, under a "Sponsored Links" heading.



INJURY TO 1-800 CONTACTS AND THE PUBLIC

- 29. Lensfast's unauthorized use of the 1-800 CONTACTS Marks has and will continue to irreparably injure 1-800 CONTACTS by confusing customers, diverting sales, and diluting the distinctiveness of the 1-800 CONTACTS Marks. If permitted to continue, Lensfast's use of the 1-800 CONTACTS Marks will continue to irreparably injure 1-800 CONTACTS, the 1800 CONTACTS Marks, the reputation and goodwill associated therewith, 1-800 CONTACTS' reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.
- 30. Lensfast's use of the 1-800 CONTACTS Marks has caused and will continue to cause confusion, mistake or deception as to the source or origin of Lensfast's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association of Lensfast's goods and services with 1-800 CONTACTS, thereby injuring 1-800 CONTACTS and the public.

31. Lensfast's use of colorable and confusingly similar imitations of the 1-800 CONTACTS Marks, including misspellings, hyphenation variations, and spacing variations, is part of a deliberate plan to trade on 1-800 CONTACTS' goodwill and otherwise unfairly compete with 1-800 CONTACTS and benefit therefrom. Lensfast knew of 1-800 CONTACTS' tremendous success and the 1-800 CONTACTS Marks and intentionally engaged in trademark infringement with full knowledge of 1-800 CONTACTS' rights and in the face of notice not to engage in such activities.

COUNT I

Federal Trademark Infringement Violation of 15 U.S.C. § 1114

- 32. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1-31 of this Complaint.
- The unauthorized appropriation and use by Lensfast in commerce of the 1-800 CONTACTS Marks, in connection with goods and services that are identical or substantially similar to those offered by 1-800 CONTACTS, is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Lensfast's services and commercial activities, and thus directly, jointly, and/or contributorily infringes 1-800 CONTACTS' rights in its federally registered marks under 15 U.S.C. § 1114. Lensfast's actions have been carried out in willful disregard of 1-800 CONTACTS' rights in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II

Federal Unfair Competition, False Designation of Origin, Passing Off, and False Advertising

15 U.S.C. §1125(a)

- 34. Plaintiff incorporates by reference the allegations of Paragraphs 1 33.
- 35. The unauthorized use by Lensfast of the 1-800 CONTACTS Marks in connection with Lensfast's business is likely to cause the public to mistakenly believe that Lensfast's contact lens replacement services originate from, are endorsed by, or are in some way affiliated with 1-800 CONTACTS and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to cause the 1-800 CONTACTS Marks to lose their significance as indicators of origin. Lensfast's actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 36. Upon information and belief, the appropriation of the 1-800 CONTACTS Marks by Lensfast as set forth above is a part of a deliberate plan to trade on the valuable goodwill established therein. With knowledge of 1-800 CONTACTS and 1-800 CONTACTS' rights and with the deliberate intention to unfairly benefit from 1-800 CONTACTS' goodwill, the actions of Lensfast has been carried out in willful disregard of 1-800 CONTACTS' rights in violation of 15 U.S.C. Section 1125(a).

COUNT III

Common Law Unfair Competition, Misappropriation, and Trademark Infringement

Unfair Practices Act – Utah Code Ann. §13-5-1 et seq.

37. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 36.

38. By its aforesaid conduct calculated to increase business and profits by deceiving and confusing members of the public, Lensfast continues to misappropriate the valuable goodwill of the 1-800 CONTACTS Marks, to infringe 1-800 CONTACTS' rights therein, and to unfairly compete with 1-800 CONTACTS under the common law and the laws of Utah. Lensfast's use of the 1-800 CONTACTS Marks to promote, market or sell products and services constitutes an unfair practice under Utah Code Ann. §13-5-1 *et seq.* Lensfast's use of the 1-800 CONTACTS Marks is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to 1-800 CONTACTS and consumers.

COUNT IV

Unjust Enrichment

- 39. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 38.
- 40. Lensfast is being unjustly enriched to the damage and irreparable harm of 1-800 CONTACTS.

DEMAND FOR RELIEF

WHEREFORE, 1-800 CONTACTS requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That 1-800 CONTACTS is the owner of the entire right, title and interest in and to the 1-800 CONTACTS Marks, that the 1-800 CONTACTS Marks are valid, enforceable and violated by Lensfast and that Lensfast has violated and is violating other relevant federal and state laws and regulations.

- B. That Lensfast, their Affiliates, agents, servants, employees, attorneys, and all persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:
- 1. Further infringement of the 1-800 CONTACTS Marks and from unfairly competing with 1-800 CONTACTS; from using any variation of the 1-800 CONTACTS Marks and any other marks or names that are confusingly similar to or that dilute the distinctiveness of those proprietary materials, including but not limited to use as domain names, trademarks, services marks, business names, meta tags, sponsored advertisement triggers, other identifiers, keywords or other terms used to attract or divert traffic on the Internet or to secure higher placement within search engine search results; and
- 2. From representing by any means whatsoever, directly or indirectly, that Lensfast, any products or services offered by Lensfast, or any activities undertaken by Lensfast, are associated with, endorsed by, sponsored by or connected in any way with 1-800 CONTACTS.
 - C. That Lensfast willfully violated 1-800 CONTACTS' rights.
- E. That Lensfast be required to pay to 1-800 CONTACTS' damages according to proof, together with prejudgment interest thereon, as 1-800 CONTACTS has sustained as a consequence of Lensfast's wrongful acts, and to account for and return to 1-800 CONTACTS any monies, profits and advantages wrongfully gained by Lensfast.
 - G. That all damages sustained by Lensfast be trebled.
- H. That Lensfast be required to pay to 1-800 CONTACTS punitive and exemplary damages.

I. That Lensfast be required to pay to 1-800 CONTACTS all attorney fees, expenses

and costs incurred in this action.

J. That 1-800 CONTACTS deliver up for impoundment during the pendency of this

action, and for destruction upon entry of judgment, all products, fixtures, writings, signage,

artwork and other materials that infringe 1-800 CONTACTS' rights, falsely designate source or

origin, or otherwise facilitate Lensfast's unfair competition with 1-800 CONTACTS.

K. That an Order be issued directing Lensfast to file with this Court and serve on 1-

800 CONTACTS' attorneys, within thirty (30) days after the date of entry of any injunction, a

report in writing and under oath setting forth in detail the manner and form in which Lensfast has

complied with the injunction.

L. That 1-800 CONTACTS be granted such further relief as this Court may deem

appropriate.

DEMAND FOR JURY TRIAL

1-800 CONTACTS hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Date: December 23, 2008

By:___/s Bryan G. Pratt_

Bryan G. Pratt

RADER, FISHMAN & GRAUER, PLLC

10653 South River Parkway, Suite 150

South Jordan, UT 84095

Tel.: (801) 572-0185; Fax: (801) 572-7666

Attorneys for Plaintiff

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INDEX OF EXHIBITS

- Exhibit A Excerpts from Lensfast websites
- Exhibit B Wyoming Secretary of State Record
- Exhibit C Whois record for lensfast.com
- Exhibit D Whois record for e-contacts.com
- Exhibit E Whois record for contactlens.com
- Exhibit F Certificates of U.S. Registration Nos. 2,675,866 and 2,731,114
- Exhibit G Letter dated September 12, 2007
- Exhibit H Letter dated March 14, 2008

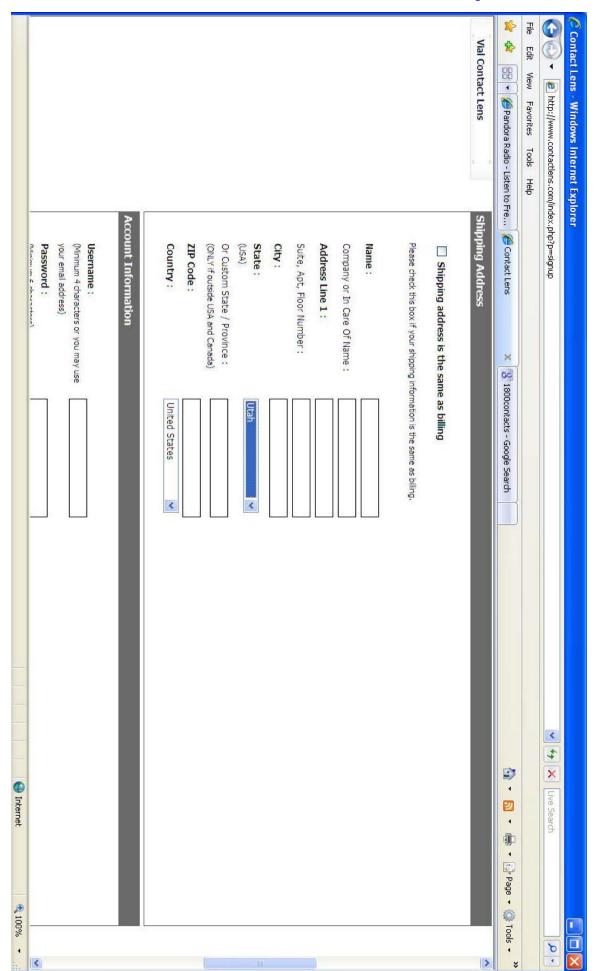


EXHIBIT A - Page 1

STATE OF WYOMING * SECRETARY OF STATE MAX MAXFIELD BUSINESS DIVISION

200 West 24th Street, Cheyenne, WY 82002-0200 Phone 307-777-7311 · Fax 307-777-5339

Website: http://soswy.state.wy.us · Email: business@state.wy.us

Filing Information

Name Lensfast LLC

Filing Type Limited Liability Company

Status Active

General Information

Fictitious Name ID 2001-000420641

Old Name Standing Good Sub Type SubStatus Current

Formation Locale Wyoming Name Consent N
Filing Date 05/15/2001 12:00 AM Term of Duration None

Delayed Effective Date Expiration Date

Inactive Date

Parties

Registered Agent Address Mailing Address

Registered Agency Services, Inc. 1903 S Greeley Hwy # 127

2120 Carey Ave Cheyenne, WY 82007 USA

Cheyenne, WY 82001 USA

Type Name / Organization / Address

Public Notes

Duration: 30 years

Filing Information

Name Lensfast LLC

Filing Type Limited Liability Company

Status Active

Most Recent Annual Report Information

Type Original AR Year 2008
License Tax \$50.00 AR Exempt N AR ID 00954162

AR Date 12/11/2008 11:41 AM Electronic AR Y

Web Filed N AR Email dtv@usa.com

Officers / Directors

Type Name / Organization / Address

Principal Address Mailing Address

1903 S Greeley Hwy # 127 Cheyenne, WY 82007 USA

Phone: () -Fax: () - 1903 S Greeley Hwy # 127 Cheyenne, WY 82007 USA

Filing Information

Name Lensfast LLC

Filing Type Limited Liability Company

Status Active

Amendment History

Num	Туре	Date	Delayed Date	Status	Username
2008-000669766	System Amendment	05/02/2008		Active	SYSTEM.USER
2007-000608005	System Amendment	05/01/2007		Active	SYSTEM.USER

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lensfast.com

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🖸 BOOKMARK 📲 😭 🧦 ...)

You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes. The data in DomainPeople, Inc.'s WHOIS database ("Data") is provided by DomainPeople, Inc. for information purposes only. DomainPeople, Inc. does not guarantee the accuracy of this Data and it is provided "asis".

By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via mail, email (spam), telephone or facsimile, or solicitations to entities other than the data recipients own, existing customers; or (2) enable high-volume, automated, electronic processes that apply to DomainPeople, Inc. (or its systems). The compilation, repackaging, dissemination, distribution or other use of this Data is expressly prohibited without the prior written consent of DomainPeople, Inc.

You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. DomainPeople, Inc. reserves the right to terminate your access to the DomainPeople, Inc. WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

DomainPeople, Inc. reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by the terms of this policy.

Registrant:

LENSFAST LLC PO BOX 1001

MEREDITH, NH 03253 United States of America

Registrar: DomainPeople, Inc.

Domain Name: lensfast.com

Created onTue May 04 23:59:59 2004 Expires onFri Apr 27 23:59:59 2012 Record last updated on .Wed Feb 14 23:21:50 2007 StatusLOCK,

Administrative Contact:

RANDOLPH WEIGNER PO BOX 1001

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the

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e.g. networksolutions.com	
Search by:	
Domain Name	
O IP Address	
	Search »

EXHIBIT C - Page1

MEREDITH, NH 03253, US ()(603) 520-1127 dtvtv@yahoo.com

Technical Contact:

SiteProduct Web Services Administrator DNS 1 N State Street 12th Floor Chicago, IL 60602, US ()+1.3122362132

administrator@siteprotect.com

Domain servers in listed order:

dns1.stabletransit.com 64.49.219.215

dns2.stabletransit.com

(lensfast.com)

Register your domain name at http://www.domainpeople.com

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

Show underlying registry data for this record

DOMAINPEOPLE, INC. **Current Registrar:**

66.216.115.24 (ARIN & RIPE IP search) IP Address: IP Location: US(UNITED STATES)-ILLINOIS-BELLEVILLE

Record Type: Domain Name Server Type: Apache 1

Lock Status: clientTransferProhibited

Web Site Status: Active no listings **DMOZ** Y! Directory: see listings Web Site Title: Contact Lens

Contact Lens.com - World's Best Contact Lens Store? Buy discount contact Meta Description: lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba

Vision, Bausch & Lomb and Focus. Free shipping.

contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, coopervision, bausch & lomb, online, free shipping, freshlook, proclear

Secure: No Yes E-commerce:

Not available Traffic Ranking: Data as of: 22-Apr-2008



Meta Keywords:

Need to get your business online?

Our professional designers can build a custom Web site for your business. \$11.95/month, plus a \$499.00

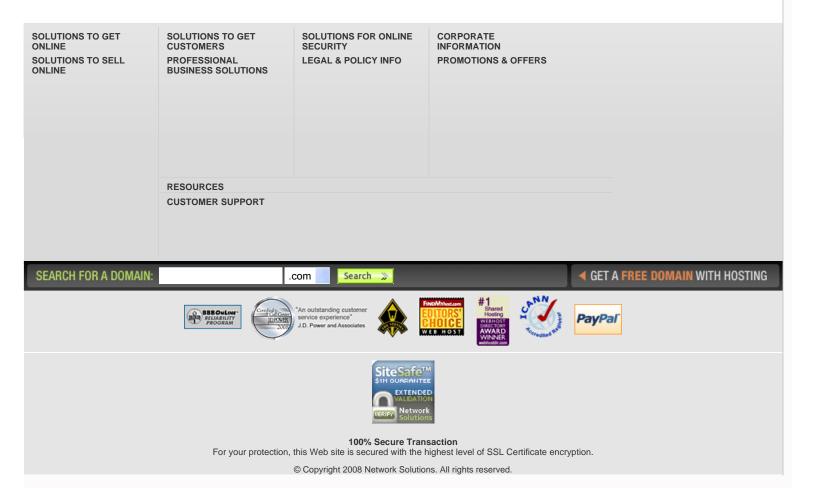




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Network Solutions.

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Manage Account

Site Search

WHOIS Search Results

Your WHOIS Search Results



e-contacts.com

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Make an offer to buy this domain 🔊

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You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. DomainPeople, Inc. reserves the right to terminate your access to the DomainPeople, Inc. WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

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By submitting this query, you agree to abide by the terms of this policy.

Registrant:

PO BOX 1001

MEREDITH, NH 03253 United States of America

Registrar: DomainPeople, Inc.

Domain Name: e-contacts.com

Created onTue Nov 17 23:59:59 1998 Expires onSat Nov 16 23:59:59 2013 Record last updated on .Thu Feb 15 11:06:26 2007

StatusLOCK,

Administrative Contact:

RANDOLPH WEIGNER PO BOX 1001

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NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the



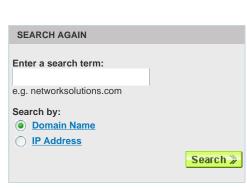


EXHIBIT D - Page1

MEREDITH, NH 03253, US ()(603) 520-1127 dtvtv@yahoo.com

Technical Contact:

SiteProtect Web Services Administrator DNS 1 N State Street 12th Floor Chicago, IL 60602, US ()312-236-2132

administrator@siteprotect.com

Domain servers in listed order:

dns1.stabletransit.com 64.49.219.215

dns2.stabletransit.com

(e-contacts.com)

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Record Type: Domain Name Server Type: Apache 1

Lock Status: clientTransferProhibited

Web Site Status: Active **DMOZ** no listings Y! Directory: see listings Web Site Title: Contact Lens

Contact Lens.com - World's Best Contact Lens Store? Buy discount contact Meta Description: lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba

Vision, Bausch & Lomb and Focus. Free shipping.

contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, coopervision, bausch & lomb, online, free shipping, freshlook, proclear

No Secure: Yes E-commerce:

Not available Traffic Ranking: Data as of: 22-Apr-2008



Meta Keywords:

Need to get your business online?

Our professional designers can build a custom Web site for your business. \$11.95/month, plus a \$499.00

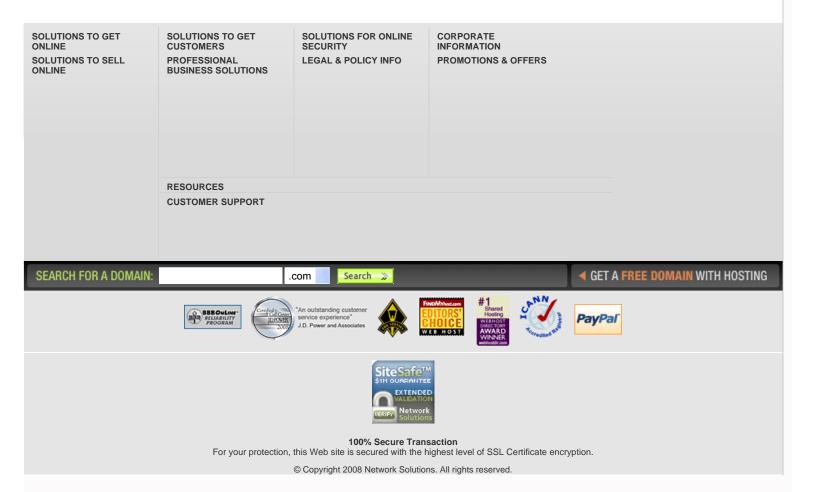




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Create and manage your pay per click advertising from as low as \$125/month plus \$99 one time set-up fee





Network Solutions.

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Customer Support

Domain Names

Web Sites & Hosting Online Marketing

All Services

Designer & Developer Community Education Center

Manage Account

Site Search

GO

WHOIS Search Results

Your WHOIS Search Results



contactlens.com

Make an instant, anonymous offer to the current domain registrant. Learn More

Make an offer to buy this domain 🔊

🖸 BOOKMARK 📲 😭 🧦 ...)

You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes. The data in DomainPeople, Inc.'s WHOIS database ("Data") is provided by DomainPeople, Inc. for information purposes only. DomainPeople, Inc. does not guarantee the accuracy of this Data and it is provided "asie".

By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via mail, email (spam), telephone or facsimile, or solicitations to entities other than the data recipients own, existing customers; or (2) enable high-volume, automated, electronic processes that apply to DomainPeople, Inc. (or its systems). The compilation, repackaging, dissemination, distribution or other use of this Data is expressly prohibited without the prior written consent of DomainPeople, Inc.

You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. DomainPeople, Inc. reserves the right to terminate your access to the DomainPeople, Inc. WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

DomainPeople, Inc. reserves the right to modify these terms at any

By submitting this query, you agree to abide by the terms of this policy.

Registrant:

PO BOX 1001

MEREDITH, NH 03253 United States of America

Registrar: DomainPeople, Inc.

Domain Name: contactlens.com

Created onTue May 04 23:59:59 2004 Expires onSat Dec 17 23:59:59 2011 Record last updated on .Sun Apr 13 04:46:39 2008,

Administrative Contact:

RANDOLPH WEIGNER PO BOX 1001

MEREDITH, NH

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the



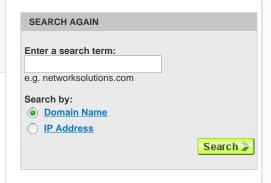


EXHIBIT E - Page 1

```
03253, US
()(603) 520-1127
dtvtv@yahoo.com
```

Technical Contact: SiteProduct Web Services Administrator DNS 1 N State Street 12th Floor Chicago, IL 60602, US ()+1.3122362132 administrator@siteprotect.com

Domain servers in listed order:

dns1.stabletransit.com 64.49.219.215

dns2.stabletransit.com

(contactlens.com)

Register your domain name at http://www.domainpeople.com

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

Show underlying registry data for this record

Current Registrar: DOMAINPEOPLE, INC.

IP Address: 66.216.115.24 (ARIN & RIPE IP search) US(UNITED STATES)-ILLINOIS-BELLEVILLE IP Location:

Record Type: Domain Name Server Type: Apache 1 Lock Status: ok Web Site Status: Active **DMOZ** no listings Y! Directory: see listings Web Site Title: Contact Lens

Contact Lens.com - World's Best Contact Lens Store? Buy discount contact Meta Description: lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba

Vision, Bausch & Lomb and Focus. Free shipping.

contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, Meta Keywords:

coopervision, bausch & lomb, online, free shipping, freshlook, proclear

Secure: Yes E-commerce: Yes **Traffic Ranking:**

Data as of: 22-Apr-2008



Need to get your business online?

Our professional designers can build a custom Web site

for your business. \$11.95/month, plus a \$499.00

design fee

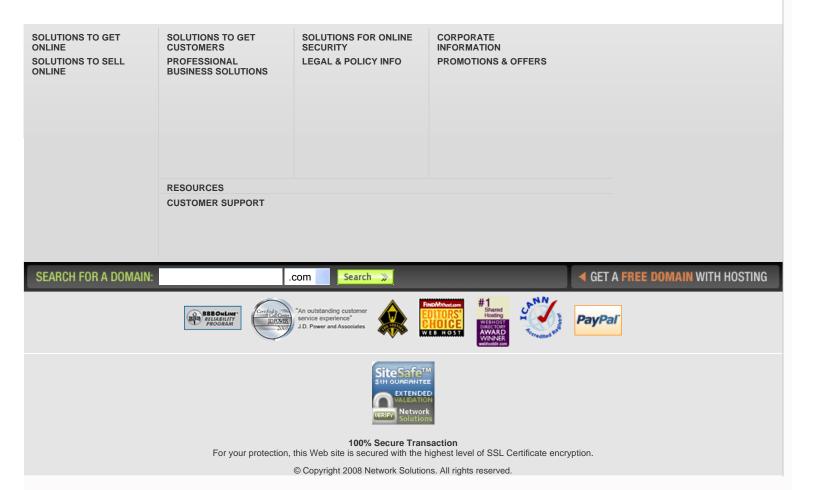


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Create and manage your pay per click advertising from as low as \$125/month plus \$99 one time set-up fee





Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,675,866 Registered Jan. 21, 2003

United States Patent and Trademark Office

SERVICE MARK PRINCIPAL REGISTER

1800CONTACTS

1-800 CONTACTS, INC (DELAWARE CORPORA-TION) 66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-0-1995; IN COMMERCE 7-0-1995.

SEC. 2(F).

SER. NO. 75-746,706, FILED 7-8-1999.

RONALD MCMORROW, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,731,114

United States Patent and Trademark Office

Registered July 1, 2003

SERVICE MARK PRINCIPAL REGISTER



1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-13-1998; IN COMMERCE 7-13-1998.

APPLICANT CLAIMS THE COLORS YELLOW, BLUE AND WHITE AS PART OF THE MARK. THE BOX BEHIND THE WORD "CONTACTS" IS YELLOW. THE BORDER AROUND THE YELLOW BOX BEHIND THE WORD "CONTACTS" IS BLUE. THE BOX BEHIND THE TERM "800" IS BLUE. THE NUMBER ONE AND THE WORD "CONTACTS" ARE WRITTEN IN BLUE. THE TERM "800" IS WRITTEN IN WHITE.

SEC. 2(F) AS TO 1800 CONTACTS.

SER. NO. 76-138,625, FILED 10-2-2000.

RONALD MCMORROW, EXAMINING ATTORNEY



VIA EXPRESS MAIL

received

10653 S. River Front Pkwy., Suite 150 South Jordan, UT 84095 Tel: (801) 572-0185 Fax: (801) 572-7666

> Bryan G. Pratt (801) 572-0185 bgp@raderfishman.com

September 12, 2007

RANDOLPH WEIGNER PO BOX 1001 MEREDITH, NH 03253 USA

Re:

Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored Advertisements at Google and Related Search Engines

Our Ref: 40302-00012

Dear Mr. Weigner:

We act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.ContactLens.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

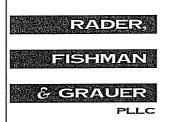
Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management Computer and Internet Law • Trade Secrets • Unfair Competition

Bloomfield Hills

Washington, D.C.

Salt Lake City

Tokyo



Randolph Weigner September 12, 2007 Page 2

MARK	NUMBER	DATE
1800 CONTACTS	2,731,114	10/02/2000
1800CONTACTS	2,675,866	07/08/1999

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

Under the circumstances, we request that you cease and desist from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove <u>ALL</u> sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns. Moreover, we request that you confirm in writing that you will comply with our requests. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

RADER,
FISHMAN
& GRAUER
PLIC

Randolph Weigner September 12, 2007 Page 3

Very truly yours,

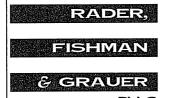
RADER, FISHMAN & GRAUER PLLC

BGP/clj

cc:

David Zeidner Brandon Dansie

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Randolph Weigner P.O. Box 1001	A. Signature A. Signature A. Signature A. Agent A. C. Date of Delivery A. P 2 7 2000 D. Is delivery address different from item 1? If YES, enter delivery address below: No	
Meredith, NH 03253	3. Service Type Certified Mail	
	4. Restricted Delivery? (Extra Fee) ☐ Yes	



VIA USPS MAIL

10653 S. River Front Pkwy., Suite 150 South Jordan, UT 84095 Tel: (801) 572-0185 Fax: (801) 572-7666

> Bryan G. Pratt (801) 572-0185 bgp@raderfishman.com

March 14, 2008

Randolph Weigner P.O. Box 1001 Meredith, NH 03253 USA

Re:

Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored Advertisements at Google and Related Search Engines Our Ref: 40302-00012

Dear Mr. Weigner:

As you are well aware, we act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to again advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are once more engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.contactLens.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and has been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

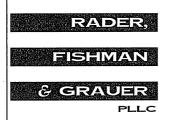
Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management Computer and Internet Law • Trade Secrets • Unfair Competition

Bloomfield Hills

Washington, D.C.

Salt Lake City

Tokyo



Randolph Weigner March 14, 2008 Page 2

MARK		DATE
1800 CONTACTS	2,731,114	10/02/2000
1800CONTACTS	2,675,866	07/08/1999

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, and in light of our previous contact, which contact is evidenced by the attached proof of receipt, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

Under the circumstances, we request that you <u>cease and desist</u> from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove <u>ALL</u> sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns.



Randolph Weigner March 14, 2008 Page 3

Furthermore, we demand that you confirm in writing the steps you will take to prevent this from occurring in the future. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

Very truly yours,

RADER, FISHMAN & GRAUER PLLC

Bryan G. Pratt

BGP/clj

cc:

David Zeidner

Randolph Weigner via FedEx

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More results from 1800contacts.com >	Discount Eye Contacts
Colored Contact Lenses at 1-800 CONTACTS World's Largest Contact Colored Contact Lenses at 1-800 CONTACTS - get free shipping, easy online ordering, and guaranteed customer service at the World's Largest Contact Lens www.1800contacts.com/lenses/color.htm - 44k - Cached - Similar pages	Great Prices and Customer Care. Leading Name Brands and Products. www.ReplaceMyContacts.com
1800Contacts Discount Coupon 1800Contacts is one of the largest online contact lens store. 1800Contacts is dedicated to providing you with a simple, hassle-free way to replace your www.samilan.com/lenses/ - 5k - Cached - Similar pages	Contacts@1-800 LENSFAST Up To 75% Discount and \$100 Rebates 1-800 536-7327 - Fast/Free Shipping www.ContactLens.com/contacts JustLenses.com Savings
Wal-Mart Facts - Wal-Mart Teams with 1-800 CONTACTS to Expand Jan 17, 2008 Wal-Mart, Sam's Club and 1-800 CONTACTS will create efficiencies across their call centers, websites, purchasing, and distribution efforts www.walmartfacts.com/articles/5598.aspx - 80k - Cached - Similar pages	Us to 70% of Retail Price. Name Brand Contacts & Low Prices. www.JustLenses.com
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1800 contacts www.phillipsnizer.com/library/cases/lib_case335.cfm - Similar pages	
Home at 1-800 CONTACTS World's Largest Contact Lens Store® Click Step 1 to the left to start the application process with 1-800 CONTACTS. Culture ? Benefits? Click Company Info. ***ATTN: Applicants - Initial contact https://jobs.1800contacts.com/careers/ - 14k - Cached - Similar pages	
Techdirt: 1-800 Contacts Sues Competitors For Kewword Ads Despite 1-300 Contacts is suing competitor LensWorld for buying ads on the "1800 Contacts" keyword. Again, assuming that LensWorld's ads are clearly for LensWorld, techdirt.com/articles/20080110/021037.shtml - 26k - Cached - Similar pages	
1-800 CONTACTS - Company Overview - Hoover's If you can still find your phone or computer, you can get replacement lenses from 1-800 CONTACTS. The firm sells lenses by phone and www.hoovers.com/1-800-contacts/-ID_55342-/free-co-factsheet.xhtml - 31k - Cached - Similar pages	
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©2008 Google - <u>Google Home</u> - <u>Advertising Programs</u> - <u>Business Solutions</u> - <u>About Google</u>	

Negative Keywords

Key words:

- 1 800 contact
- 1 800 contacts
- 1800 contacts
- 1-800 contacts
- 1800.contacts
- 1800contact
- 1800contacts
- 1-800-contacts
- 1800contacts.com
- 800 contacts
- 800.contacts
- 800contacts
- lens express
- Lensexpress
- Aquasoft
- Aquasoft complete vision system
- www.1800contacts.com.
- www.1800contacts.net.
- www.1800contacts.org.
- www.1800contacs.com.
- www.1800contacs.net.
- www.1-800contacts.com.
- www.1-800contacts.net.
- www.800contacts.com.
- www.800contacts.net.
- www.contacts.com.
- www.lens1st.com. www.lensfirst.com.
- www.lensexpress.com.
- www.lensexpress.net.

FISHMAN	River Park Corporate Center One 0653 S. River Front-Parkway Guite 150 South Jordan, UT 21095	D WAIL D PRINTY BOWER 02 1P \$ C7.35 0002419020 MAR 17 2008 MAILED FROM ZIP CODE84095 1st Notice MAR 2.0 2008 2nd Notice MAR 2.6 2008 RETURNED APAILS OF Return
	SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
	■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: P. O. Bandolph Weight	A. Signature X
	2. Article Numbe (Transfer from PS Form 3811	3. Service Type Si Certified Mail